

STATE OF MINNESOTA  
IN SUPREME COURT  
C9-85-1134

OFFICE OF  
APPELLATE COURTS  
FILED

OCT 17 1986

WAYNE TSCHIMPERLE  
CLERK

Order Prescribing and Promulgating  
Rules of Family Court Procedure

WHEREAS, an Advisory Committee appointed by the Supreme Court has recommended to the Court the adoption of certain Rules of Family Court Procedure; and

WHEREAS, the recommended rules were published, together with notice of hearing, in St. Paul Legal Ledger and Finance & Commerce prior to the submission of written comment and oral arguments which were heard on September 19, 1986; and

WHEREAS, the Court has considered said recommendations and is fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED that the annexed Rules of Family Court Procedure, including Forms 1 through 8C, be, and the same hereby are, adopted, prescribed, and promulgated to be effective on January 1, 1987, for the regulation of the procedures and the practice of family law in the trial courts of the State of Minnesota. The inclusion of the Advisory Committee Notes is made for convenience and does not necessarily reflect Court approval of the comments made in said Notes.

Dated: October 14, 1986.

BY THE COURT:

  
Chief Justice Douglas K. Amdahl

## **RULES OF FAMILY COURT PROCEDURE**

### **PREAMBLE**

These rules are designed to assist the Court and Family Law practitioners by clarifying the procedures and practice of Family Law. The intent of the rules is to achieve a degree of uniformity of procedures and practice without sacrificing the individual nature of each domestic relations matter.

These rules do not cover every conceivable situation. The practitioner must be guided by pertinent statutes and case law. The Minnesota Rules of Civil Procedure, where applicable, and these Rules shall apply to Family Law Practice. Local rules may have been adopted by individual courts to govern subjects not included in these rules.

The comments to the rules are intended to assist practitioners in the interpretation and application of the rules. They are not intended as a substitute for statutory or case law.

## **RULE I. GENERAL**

### **Rule 1.01 Commencement of Proceedings**

Marriage dissolution, legal separation and annulment proceedings shall be commenced by service of a summons and petition upon the person of the other party, or by publication pursuant to court order. Service in other family court proceedings and actions shall be governed by the rules of civil procedure.

#### **Committee Commentary**

Proceedings for dissolution, legal separation and annulment are governed by Minn. Stat. Ch. 518. Minn. Stat. §518.10 sets out the requisites for the petition. Minn. Stat. §518.11 governs service by publication and precludes substituted service or service by mail under Minn. R. Civ. P. 4.05. The respondent's answer must be served within 30 days. Minn. Stat. §518.12. A joint proceeding is commenced on the date when both parties have signed the petition; no summons is required. Minn. Stat. §§518.09, .11. In cases involving foreign nationals, see Part I, Rule 30, Code of Rules for District Courts.

Custody proceedings under the Uniform Child Custody Jurisdiction Act are governed by Minn. Stat. 518A. Interstate service and notice must be accomplished at least 20 days prior to any hearing in Minnesota. Service within the state is set forth in Minn. R. Civ. P. 4.

Domestic abuse proceedings are governed by Minn. Stat. Ch. 518B. Ex parte orders for protection must include notice of a hearing within 14 days of the issuance of the order. Personal service upon the respondent must be effected not less than 5 days prior to the first hearing.

Support proceedings under the revised Uniform Reciprocal Enforcement of Support Act are governed by Minn. Stat. Ch. 518C. The time for answer is governed by the law of the responding jurisdiction.

Actions to establish parentage are governed by Minn. Stat. Ch. 257. Actions for reimbursement for public assistance are governed by Minn. Stat. §256.87. Defendant has 20 days to answer the complaint in each action.

The Petitioner must notify the public agency responsible for support enforcement of all proceedings if either party is receiving or has applied for public assistance. Minn. Stat. §518.551.

A party appearing pro se shall perform the acts required by rule or statute in the same manner as an attorney representing a party. An attorney dealing with a party pro se shall proceed in the same manner, including service of process, as in dealing with an attorney.

## **Rule 1.02 Guardian Ad Litem for Children**

Whenever the court appoints a guardian ad litem to represent the interest of a child or children, the guardian ad litem shall be furnished copies of all pleadings, documents and reports by the party or agency which served or submitted them. A party or agency submitting, providing or serving reports and documents to or on a party or the court, shall provide copies promptly thereafter to the guardian.

Upon motion, the court may extend the guardian's powers as it deems necessary. Except upon a showing of exigent circumstances, the guardian ad litem shall submit any recommendations, in writing, to the parties and to the court at least ten (10) days prior to any hearing at which such recommendations shall be made. All oral communication by the guardian to the court shall be on the record.

### **Committee Commentary**

A guardian appointed pursuant to Minn. Stat. §257.60 becomes a party to the action if the child is made a party. The guardian then would be entitled to initiate and respond to motions, conduct discovery, call and cross-examine witnesses, make oral or written arguments or reports and appeal on behalf of a child without the necessity of applying to the court.

A guardian appointed under Minn. Stat. §518.165 is not a party to the proceeding and may only initiate and respond to motions and make oral statements and written reports on behalf of the child.

A party has the right to cross-examine as an adverse witness the author of any report or recommendation on custody and visitation of a minor child. Thompson v. Thompson, 238 Minn. 41, 55 N.W.2d 329 (1952) and Scheibe v. Scheibe, 308 Minn. 449, 241 N.W.2d 100 (1976).

Practice among the courts may vary with respect to appointments. Some courts maintain panels of lay guardians while other courts maintain panels of attorney guardians. If a lay guardian is appointed, an attorney for the guardian may also be appointed. Guardians may volunteer or be paid for their services. An attorney requesting appointment of a guardian should inquire into local practice.

## **Rule 1.03 Substitution or Withdrawal of Counsel**

No attorney of record shall withdraw from representation except upon order of the court or substitution of attorney. In the event an attorney has not withdrawn, service of all pleadings upon the attorney of record shall constitute proper service and adequate notice to the opposing party. When an attorney is no longer of record, the party shall be treated as a party pro se until a substitution of attorney or notice of appearance has been properly executed and filed for record. Where an attorney has been substituted for attorney of record, a notice of substitution of attorney and consent of attorney of record or notice of appearance shall be filed with the court administrator and served upon the opposing attorney of record.

### **Committee Commentary**

The intent of this rule is to protect the representation of parties within the Family Court. The attorney of record is required to make an affirmative showing of the reasons for withdrawal before the court will grant relief. Such reasons may include violations of a written retainer agreement or similar circumstances which make continued representation inimical to the interests of the client or the attorney. Unless an attorney has been allowed to withdraw from the proceedings and the withdrawal has been properly filed with the Court, the attorney of record may be served with pleadings years after the last contact with the client. Such service is valid service upon the former client. Atwood v. Atwood, 253 Minn. 185, 91 N.W.2d 728 (1958). Rule 1.16 Code of Professional Conduct; Minn. Stat. §481.11.

### **Rule 1.04 Time**

Time is governed by Minnesota Rules of Civil Procedure except where a different time is specified by statute. Procedural time limits may be shortened for good cause shown.

### **Committee Commentary**

Family Court proceedings involve human considerations which may require expeditious judicial attention. The shortening of time should be the exception and not the rule. A motion to shorten time will be granted only upon demonstration of the unusual circumstances justifying this extraordinary relief. See Rule 2.05.

## **RULE II. MOTION PRACTICE**

### **Rule 2.01 Notice**

All motions shall be accompanied by either an order to show cause or by a notice of motion which shall state, with particularity, the time and place of the hearing and the name of the judge, referee, or judicial officer, as assigned by the local assignment clerk.

#### **Committee Commentary**

The scheduling of cases and the assignment of judges, judicial officers or referees is often a situation in which local calendaring practices prevail. Effective disposition of litigation requires immediate notice of the hearing officer's identity to preclude last minute filing of notices to remove or affidavits of prejudice.

### **Rule 2.02 Form of Motion; Supporting Documentation**

Motions shall set out with particularity the relief requested in individually numbered paragraphs. All motions must be supported by appropriate affidavits, relevant and material to the issues before the court. The paragraphs of the affidavits should be specific and factual; where possible, they should be numbered to correspond to the paragraphs of the motion. In all motions for temporary relief, where issues of child support or spousal maintenance are before the court, both parties shall submit an application for temporary relief on the form set forth at Rule 10.01.

#### **Committee Commentary**

The use of the form of the application for temporary relief is mandatory.

### **Rule 2.03 Service and Filing**

(a) **Required Filing of Moving Papers:** All moving papers shall be filed with the court administrator not later than five (5) days prior to the scheduled hearing date, exclusive of intervening Saturdays, Sundays and holidays.

(b) **Required Service and Filing of Responsive Documents:** All responsive documents shall be served and filed at least two (2) days before the date of hearing, unless otherwise authorized by the court.

#### **Committee Commentary**

The service of moving papers is governed by Minn. R. Civ. P. 6.04.

#### **Rule 2.04 Motion with Request for Oral Testimony**

If demand has been made for the taking of oral testimony and if the matter cannot be heard adequately in the scheduled time, the hearing shall be utilized as a prehearing conference. The court may issue an order limiting the number of witnesses each party may call, the scope of their testimony, and the total time for each party to present evidence. Such an order shall be made only after the attorney for each party has had an opportunity to suggest appropriate limits.

#### **Committee Commentary**

Minn. Stat. §518.131, Subd. 8 grants a party the right to present oral testimony upon the filing of a demand either in the initial application for temporary relief or in the response thereto.

The party demanding oral testimony should provide a list of the proposed witnesses, the scope of their testimony and an estimate of the required time.

#### **Rule 2.05 Ex Parte Relief**

(a) The court may grant ex parte relief only if requested by a motion and supporting affidavit(s), properly executed.

(b) An order to show cause shall not be used to grant ex parte relief except in those cases where permitted pursuant to Rule 2.06 below.

(c) All such orders and supporting documents must be filed with the order appropriately signed out for personal service. A conformed file copy of such order shall be retained by the court administrator in the file.

#### **Committee Commentary**

Minn. R. Civ. P. 65.01 states the notice requirements for ex parte relief. Minn. Stat. §518.131 controls ex parte temporary restraining orders.

#### **Rule 2.06 Orders to Show Cause**

Orders to show cause shall be obtained in the same manner specified for ex parte relief. Such orders may require production of limited financial information deemed necessary by the court.

An order to show cause shall be issued only where the motion seeks a finding of contempt or the supporting affidavit makes an affirmative showing of a need to require the party to appear in person at the hearing.

### **Committee Commentary**

The use of orders to show cause can be abused by requiring a personal appearance where none is necessary. A timely notice of motion informing a party of the time to appear, if he or she wishes, is adequate in most proceedings.



## **RULE III. INITIATING FINAL HEARINGS**

### **Rule 3.01 Note of Issue**

A final hearing shall be scheduled only upon the service and filing of a note of issue, which shall contain the title of the proceeding and the names and addresses of all attorneys and parties. A prehearing conference is required in contested proceedings. Certificates of readiness shall not be required.

#### **Committee Commentary**

Before or at the time of filing of the note of issue, the summons and petition, with proof of service (or the joint petition), and other documents required to be filed should be filed with the court administrator. Minn. R. Civ. P. 5.04. It must be shown affirmatively that the time to answer has expired or has been waived, or that the opposing party has otherwise appeared. See Rules 5.01 and 5.02.

### **Rule 3.02 Continuing Discovery**

Discovery shall remain open notwithstanding the filing of a note of issue. The court shall establish the date for termination of discovery at the prehearing conference.

#### **Committee Commentary**

The rule in Minnesota is that valuations in dissolution proceedings are to be made as of the date of final hearing. Other proceedings may be brought where, due to the ongoing jurisdiction of the court, current information is required for adjudication of the issues presented.

### **Rule 3.03 Notice in Contested Proceedings**

Upon the filing of a note of issue in a contested proceeding, the court shall notify all parties of the scheduling of the prehearing conference.

A cancellation or continuance of any scheduled prehearing conference or final hearing will be granted only upon a timely request approved by the authorized court personnel after notice to all parties.

## **RULE IV. PREHEARING CONFERENCE**

### **Rule 4.01 Purpose**

The purpose of the prehearing conference is to secure final settlement of the proceeding or, in the alternative, to define and to narrow the issues remaining to be determined and to establish the time required for final hearing.

### **Rule 4.02 Prehearing Statement**

Each party shall complete a prehearing conference statement on the form set forth at Rule 10.01 which shall be served upon all parties and filed at least ten (10) days prior to the date of the prehearing conference.

#### **Committee Commentary**

The use of the form is mandatory. The use of supplementary exhibits is encouraged.

### **Rule 4.03 Attendance**

The parties and attorneys who will try the proceeding shall attend the prehearing conference, prepared to negotiate a final settlement.

If a stipulation is reduced to writing prior to the prehearing conference, the case may be heard as a default at the time scheduled for the conference. Only the party obtaining the decree need appear.

### **Rule 4.04 Failure to Appear**

If a party fails to appear at a prehearing conference, the court may dispose of the proceedings without further notice to that party.

#### **Committee Commentary**

In disposing of a proceeding, the Court may dismiss it entirely, grant relief to the party appearing, grant attorney fees, bifurcate the proceedings and grant partial relief, or grant any other relief which the court may deem appropriate. See Rule 4.05.

**Rule 4.05 Sanctions**

Failure to comply with the rules relating to prehearing conferences may result in the case being stricken from the contested calendar, granting of partial relief to the appearing party, striking of the non-appearing party's pleadings and the hearing of the matter as a default, an award of attorney fees and costs, and such other relief as the court finds appropriate, without further notice to the defaulting party.

## **RULE V. DEFAULT HEARINGS**

### **Rule 5.01 Default Without Stipulation**

In all default proceedings where a stipulation has not been filed, an affidavit of default and of non-military status of the defaulting party or a waiver by that party of any rights under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, shall be filed with the court.

Where the defaulting party has appeared by a pleading other than an answer, or personally without a pleading, and has not affirmatively waived notice of the other party's right to a default hearing, the moving party shall notify the defaulting party in writing at least ten (10) days before the final hearing of the intent to proceed to judgment. The notice shall state:

You are hereby notified that an application has been made for a final hearing to be held not sooner than three (3) days from the date of this notice. You are further notified that the court will be requested to grant the relief requested in the petition at the hearing.

The default hearing will not be held until the notice has been mailed to the defaulting party at the last known address and an affidavit of service by mail has been filed.

### **Rule 5.02 Default With Stipulation**

Whenever a stipulation settling all issues has been executed by the parties, the stipulation shall be filed with a note of issue, together with an affidavit of non-military status of the defaulting party or a waiver of that party's rights under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, if not included in the stipulation.

In a stipulation where a party appears pro se, the following waiver shall be executed by that party:

I know I have the right to be represented by an attorney of my choice. I hereby expressly waive that right and I freely and voluntarily sign the foregoing stipulation.

### **Committee Commentary**

The stipulation should establish that one of the parties may proceed as if by default, without further notice to or appearance by the other party.

The waiver of counsel should be prepared as an addendum following the parties' signatures on the stipulation.

**Rule 5.03 Default Proceedings; Preparation of Decree**

In a scheduled default matter, proposed findings of fact, conclusions of law, order for judgment and judgment and decree shall be submitted to the court in advance of or at the final hearing.

## **RULE VI. FINAL HEARINGS**

### **Rule 6.01 Failure to Appear; Sanctions**

Failure to appear at the scheduled final hearing may result in the case being stricken from the contested calendar, granting of partial relief to the appearing party, striking of the non-appearing party's pleadings and the hearing of the matter as a default, an award of attorney's fees and costs, and such other relief as the court finds appropriate, without further notice to the defaulting party.

### **Rule 6.02 Stipulations Entered in Open Court; Preparation of Findings**

Where a stipulation has been entered orally upon the record, the attorney directed to prepare the decree shall submit it to the court with a copy to each party. Entry of the decree shall be deferred for ten (10) working days to allow for objections unless the decree contains the written approval of the attorney for each party.

## **RULE VII. FINDINGS AND DECREE**

### **Rule 7.01 Decree Providing for Child Support and/or Spousal Maintenance**

All judgments and decrees which include awards of child support and/or spousal maintenance, unless otherwise directed by the court, shall include the following provisions:

"That both parties are hereby notified that:

(a) Payment of support and/or spousal maintenance is to be as ordered herein, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.

(b) Payment of support must be made as it becomes due, and failure to secure or denial of rights of visitation is not an excuse for non-payment, but the aggrieved party must seek relief through a proper motion filed with the court.

(c) The payment of support and/or spousal maintenance takes priority over payment of debts and other obligations.

(d) A party who remarries after dissolution and accepts additional obligations of support does so with full knowledge of his or her prior obligations under this proceeding.

(e) Child support and/or spousal maintenance is based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made regularly throughout the year as ordered."

### **Rule 7.02 Decree with Public Assistance**

When a party is receiving or has applied for public assistance, the party obtaining the judgment and decree shall serve a copy on the agency responsible for child support enforcement.

#### **Committee Commentary**

Minn. Stat. §518.551 requires that maintenance or support must be ordered payable to the public agency so long as the obligee is receiving public assistance.

Agencies responsible for enforcement of child support in private cases also require a copy of the judgment and decree.

**Rule 7.03 Decree with Supervised Custody or Visitation**

Where there is an ongoing supervision of custody or visitation, a copy of the judgment and decree shall be provided to the appropriate agency by the party obtaining the decree.

**Rule 7.04 Statutorily Required Notices**

Where notices are required by statutes on subjects addressed in an order or decree, the notices shall not be included verbatim but shall be set forth in an attachment and incorporated by reference.

**Committee Commentary**

See Rule 10.01, Form 3, for the concept of the form of the attachment.

**Rule 7.05 Requirement of Findings**

All orders and decrees in family court proceedings shall contain particularized findings of fact sufficient to support the determination of custody and visitation, child support or maintenance, distributions of property, and other issues decided by the court.

**Committee Commentary**

See Minn. R. Civ. P. 52.01; Wallin v. Wallin, 290 Minn. 261, 187 N.W.2d 627 (1971); Rosenfeld v. Rosenfeld, 311 Minn. 76, 249 N.W.2d 168 (1976); Moylan v. Moylan, 384 N.W.2d 859 (Minn. 1986).



## RULE VIII. CONTEMPT

### Rule 8.01 Moving Papers; Service; Notice

Contempt proceedings shall be initiated by an order to show cause served upon the person of the alleged contemnor together with motions accompanied by appropriate supporting affidavits.

The order to show cause shall direct that the alleged contemnor appear and show cause why he/she should not be held in contempt of court and why the moving party should not be granted the relief requested by the motion.

The order to show cause shall contain at least the following:

- (a) a reference to the specific order of the court alleged to have been violated and the date of entry;
- (b) a quotation of the specific applicable provisions ordered;
- (c) the alleged failure(s).

The supporting affidavit of the moving party shall set forth each alleged violation of the order with particularity. Where the alleged violation is a failure to pay sums of money, the affidavit shall state the kind of payments in default and shall specifically set forth the payment date(s) and the amounts due, paid and unpaid for each failure.

The responding affidavit shall set forth with particularity any defenses the responding person will present to the court. Where the alleged violation is a failure to pay sums of money, the affidavit shall set forth the nature, date(s) and amounts of payments, if any.

### Committee Commentary

Service of the order to show cause upon the person provides jurisdiction for the issuance of a writ of attachment or bench warrant, if necessary, and meets the requirement for an opportunity to be heard. See Clausen v. Clausen, 250 Minn. 293, 84 N.W.2d 675 (1976); Hopp v. Hopp, 279 Minn. 170, 156 N.W.2d 212 (1968).

### **Rule 8.02 Hearing; Procedure**

The alleged contemnor must appear in person before the court to be afforded the opportunity to resist the motion for contempt by sworn testimony. The court shall not act upon affidavit alone, absent express waiver by the responding person of the right to offer sworn testimony.

#### **Committee Commentary**

For the right to counsel in contempt proceedings, see Cox v. Slama, 355 N.W.2d 401 (Minn. 1984).

### **Rule 8.03 Default of Conditions for Stay of Sentence**

Where the court has entered an order for contempt with a stay of sentence and there has been a default of the conditions for the stay, before a writ of attachment or a bench warrant will be issued, an affidavit of non-compliance and request for writ of attachment must be served upon the person of the defaulting party, unless the person is shown to be avoiding service.

A proposed order for writ of attachment shall be submitted to the court by the moving party.

## **RULE IX. COURT-ORDERED MEDIATION**

### **Rule 9.01 Initiation**

The court may issue an order for mediation upon a motion by a party, by stipulation of the parties, at a hearing for temporary relief, or when a note of issue has been filed asserting custody as a contested issue. The court shall not require mediation when it finds probable cause that domestic or child abuse has occurred. Where the parties have made an unsuccessful effort to mediate with a qualified mediator, additional mediation need not be required.

### **Rule 9.02 Appointment of Mediator**

The court shall appoint a mediator from its approved list, unless the parties stipulate to a mediator not on the list.

Each party shall be entitled to file a request for substitution within seven days after receipt of notice of the appointed mediator. The court shall then appoint a different mediator with notice given to the parties.

#### **Committee Commentary**

Co-mediation (mediation conducted by a mediator of each gender) may be available to the parties at the request of either party and with the approval of the court.

### **Rule 9.03 Mandatory Orientation**

Parties ordered by the court to participate in mediation shall attend the orientation session.

#### **Committee Commentary**

In the orientation session the mediator should assess the appropriateness of the parties for mediation, describe the mediation process, elicit questions from the parties about how the process works, inquire if they have retained attorneys, advise them to consult their attorneys before and during the mediation process, distribute a copy of Rule IX and obtain the parties' signatures on the agreement to mediate.

#### **Rule 9.04 Scope of Mediation**

Mediation may address all issues of controversy between the parties, unless limited by court order.

#### **Committee Commentary**

The parties may involve resource persons to assist in resolving contested issues. Resource persons may include both parties' attorneys, appraisers, accountants, and mental health professionals.

Only the parties and the mediator(s) should attend mediation sessions unless the parties and mediator agree otherwise.

#### **Rule 9.05 Confidentiality**

Mediation proceedings under these rules are privileged, not subject to discovery, and inadmissible as evidence in family court proceedings, without the written consent of both parties. Mediators and attorneys for the parties, to the extent of their participation in the mediation process, cannot be called as witnesses in the family court proceedings.

No record shall be made without the agreement of both parties, except for a memorandum of issues that are resolved.

#### **Rule 9.06 Termination of Mediation**

Mediation shall be terminated upon the earliest of the following circumstances to occur:

- (a) a complete agreement of the parties;
- (b) the partial agreement of the parties and a determination by the mediator that further mediation will not resolve the remaining issues;
- (c) the determination by the mediator or either party that the parties are unable to reach agreement through mediation or that the proceeding is inappropriate for mediation.

### **Committee Commentary**

The mediator may determine that further mediation is inappropriate based upon information that one of the parties, or a child of a party, has been physically or sexually abused by the other party. See Minn. Stat. §518.619, Subd. 2.

These rules recognize that there may be a continuing concurrent obligation to report domestic, child, physical, or sexual abuse under different statutes.

### **Rule 9.07 Memorandum of the Mediator**

Upon termination of mediation, the mediator shall submit a memorandum to the parties and the court setting out (1) the complete or partial agreement of the parties and enumerating the issues upon which they cannot agree or (2) that no agreement has been reached, without any explanation.

### **Committee Commentary**

Where the parties are represented by attorneys, the mediator should send a copy of the memorandum to the parties' attorneys.

### **Rule 9.08 Child Custody Investigation**

When the parties are unable to reach agreement on custody through mediation, the mediator may not conduct a custody investigation, unless the parties agree in writing executed after the termination of mediation that the mediator shall conduct the investigation or unless there is no other person reasonably available to conduct the investigation or evaluation. Where the mediator is also the sole investigator for a county agency charged with making recommendations to the court regarding child custody and visitation, the court administrator shall make all reasonable attempts to obtain reciprocal services from an adjacent county. Where such reciprocity is possible, another person or agency is "reasonably available."

### **Committee Commentary**

Although Minn. Stat. §518.619, Subd. 6 permits the mediator to conduct the investigation, it is the intent of this rule to define when the mediator can reasonably do so. Minn. Stat. §518.167, Subd. 3 contemplates the bifurcation of mediation and the custody investigation to insure confidentiality. The rule acknowledges the difficulty of implementing such a requirement in those counties with only one court services staff member.

### **Rule 9.09 Fees**

Each court shall establish fees for mediation services. The court may allocate payment of the fees among the parties and the county.

## **RULE X. FORMS**

### **Rule 10.01 Appendix of Forms**

The forms contained in the Appendix of Forms are sufficient under the rules.

### **Committee Commentary**

The use of the forms for the application for temporary relief and the prehearing statement is mandatory under Rule 2.02 and Rule 4.02. The use of the other forms is recommended.

State of Minnesota

COUNTY

COURT

JUDICIAL DISTRICT

CASE NO.

In Re The Marriage Of:

**APPLICATION FOR  
TEMPORARY RELIEF**

\_\_\_\_\_ Petitioner,

and

\_\_\_\_\_ Respondent.

STATE OF MINNESOTA

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, the Petitioner-Respondent hereinafter called Wife-Husband, being first duly sworn, upon oath, respectfully represents to the Court that:

1. The parties were married on \_\_\_\_\_; the Wife's age is \_\_\_\_\_; the Husband's age is \_\_\_\_\_.
2. The parties have been separated \_\_\_\_\_ months during which the Husband-Wife has paid \$\_\_\_\_\_ to the Wife-Husband.
3. (a) There are \_\_\_\_\_ children of the parties, aged \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, now in the care of the Wife-Husband at \_\_\_\_\_.
- (b) The family is owned-rented by the parties and is now occupied by the Wife-Husband-both parties and \_\_\_\_\_.
- (c) For the best interests of the minor children, they should be in the temporary custody of the Husband-Wife.
- (d) The Wife has \_\_\_\_\_ minor children of a prior marriage. The amount of support received-paid is \$\_\_\_\_\_ per month.
- (e) The husband has \_\_\_\_\_ minor children of a prior marriage. The amount of support received-paid is \$\_\_\_\_\_ per month.

4. The assets of the parties include:

ITEM	APPROXIMATE MARKET VALUE AND ENCUMBRANCES			
	Wife	Husband	Joint Tenancy	Encumbrances
(a) Cars (Year/Make)	\$ _____	\$ _____	\$ _____	\$ _____
(b) Stocks, Bonds, Notes	\$ _____	\$ _____	\$ _____	\$ _____
(c) Cash and Savings	\$ _____	\$ _____	\$ _____	\$ _____
(d) Claims	\$ _____	\$ _____	\$ _____	\$ _____
(e) Accounts Receivable	\$ _____	\$ _____	\$ _____	\$ _____
(f) Homestead	\$ _____	\$ _____	\$ _____	\$ _____

5. Secured Debts, not listed above (excluding homestead):

(a) Creditor	1. _____	2. _____	3. _____	4. _____
(b) Total Outstanding	\$ _____	\$ _____	\$ _____	\$ _____
(c) Monthly Payment	\$ _____	\$ _____	\$ _____	\$ _____
(d) Party Obligated	_____	_____	_____	_____
(e) Security Pledged	_____	_____	_____	_____

6. Necessary Monthly Expenses:

	Wife/ Husband	Child(ren) (if separate)
(a) Rent	\$ _____	\$ _____
(b) Mortgage Payment	_____	_____
(c) Contract for Deed Payment	_____	_____
(d) Homeowner's Insurance	_____	_____
(e) Real Estate Taxes	_____	_____
(f) Utilities	_____	_____
(g) Heat	_____	_____
(h) Food	_____	_____
(i) Clothing	_____	_____
(j) Laundry and Drycleaning	_____	_____
(k) Medical and Dental	_____	_____
(l) Transportation (includes _____ car payment)	_____	_____
(m) Car Insurance	_____	_____
(n) Life Insurance	_____	_____
(o) Recreation, Entertainment & Travel	_____	_____
(p) Newspapers and Magazines	_____	_____
(q) Social and Church Obligations	_____	_____
(r) Personal Allowances and Incidentals	_____	_____
(s) Babysitting and Child Care	_____	_____
(t) Home Maintenance	_____	_____
(u) Children School Needs and Allowances	_____	_____
(v) Additional Information _____	_____	_____
re: debts and expenses _____	_____	_____
<b>TOTAL:</b>	\$ _____	\$ _____



**7. EMPLOYMENT DATA:** Provide the following data for each employer. Attach prior month's paycheck stub(s) as Exhibit.

HUSBAND

WIFE

(a) Name of Employer \_\_\_\_\_

Type of Employment \_\_\_\_\_

(b) Income:

1. Gross income per \* \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

2. Statutory Deductions:

Federal Income Tax \$ \_\_\_\_\_ \$ \_\_\_\_\_

State Withholding \$ \_\_\_\_\_ \$ \_\_\_\_\_

Social Security (FICA) \$ \_\_\_\_\_ \$ \_\_\_\_\_

Pension Deduction \$ \_\_\_\_\_ \$ \_\_\_\_\_

Union Dues \$ \_\_\_\_\_ \$ \_\_\_\_\_

Dependent Health/  
Hospitalization Coverage \$ \_\_\_\_\_ \$ \_\_\_\_\_

Dental Coverage \$ \_\_\_\_\_ \$ \_\_\_\_\_

3. Subtotal of Stat. Deductions \$ \_\_\_\_\_ \$ \_\_\_\_\_

4. Net Income (line 1 - line 3) \$ \_\_\_\_\_ \$ \_\_\_\_\_

5. Other Paycheck Deductions:

Specify \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

6. Subtotal: Other Deductions \$ \_\_\_\_\_ \$ \_\_\_\_\_

7. NET TAKE HOME PAY (line 4 - line 6) \$ \_\_\_\_\_ \$ \_\_\_\_\_

(c) Tax withholding above are based on  
married-single with # deductions \_\_\_\_\_

(d) Employer reimbursed expenses \$ \_\_\_\_\_ \$ \_\_\_\_\_

Specify: \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

(e) Other Income:

1. Public Assistance (AFDC/GA) \$ \_\_\_\_\_ \$ \_\_\_\_\_

2. Social Security benefits for  
party or child(ren) \$ \_\_\_\_\_ \$ \_\_\_\_\_

3. Unemployment/Workers Comp. \$ \_\_\_\_\_ \$ \_\_\_\_\_

4. Interest income per \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

5. Dividend income per \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

6. Gross Rental Income \$ \_\_\_\_\_ \$ \_\_\_\_\_

7. Other income \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

\*Monthly income is to be calculated using a 4.3 multiple.

8. (a) \$\_\_\_\_\_ is a reasonable amount for temporary support for \_\_\_\_\_ children per month.

(b) \$\_\_\_\_\_ is a reasonable amount for temporary maintenance per month.

(c) Payment should be made on \_\_\_\_\_.

9. \$\_\_\_\_\_ has been paid on the Wife's attorney fees and costs.

\$\_\_\_\_\_ has been paid on the Husband's attorney fees and costs.

\$\_\_\_\_\_ is reasonable for Wife-Husband's attorney fees and costs.

10. Additional Material Facts:

WHEREFORE, Petitioner-Respondent prays for an order granting such relief prior to trial as may be just and lawful.

Subscribed and sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 198\_\_\_\_\_

\_\_\_\_\_  
Petitioner-Respondent

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, Minnesota

My commission expires \_\_\_\_\_

State of Minnesota

COUNTY

COURT

JUDICIAL DISTRICT

CASE NO.

**PREHEARING STATEMENT**

In Re The Marriage Of:

\_\_\_\_\_ Petitioner,

and

\_\_\_\_\_ Respondent.

**1. Personal Information:**

HUSBAND

WIFE

Full Name

Present Mailing Address

Employer

Street Address

City, State, ZIP

Birthdate

age

age

Marriage Date

Separation Date (Different Residences)

Date(s) of Temporary Order(s), if any

Minor Children born to this marriage or who will be affected by this legal action:

FULL NAME

Birthdate

Living with:

age

age

age

age

age

Is the wife now pregnant?  no  yes - due date of \_\_\_\_\_

Is the issue of custody contested?  yes  no

If custody is disputed, each party shall submit proposals for custody and visitation for each child as Exhibit 1A.

**2. EMPLOYMENT:** Provide the following data for each employer.

HUSBAND

WIFE

a) Name of Employer

Length of Employment

Income:

(1) Gross income per _____	\$ _____	\$ _____
Statutory Deductions:		
Federal Income Tax	\$ _____	\$ _____
State Withholding	\$ _____	\$ _____
Social Security (FICA)	\$ _____	\$ _____
Pension Deduction	\$ _____	\$ _____
Union Dues	\$ _____	\$ _____
Dependent Health/ Hospitalization Coverage	\$ _____	\$ _____
Dental Coverage	\$ _____	\$ _____
(2) Subtotal of Statutory Deductions:	\$ _____	\$ _____
(3) Net Income (line 1 - line 2)	\$ _____	\$ _____
Other Paycheck Deductions:		
Specify: _____	\$ _____	\$ _____
_____	\$ _____	\$ _____
(4) Subtotal of other Deductions	\$ _____	\$ _____
(5) NET TAKE HOME PAY PER _____	\$ _____	\$ _____
(line 3 - line 4)		

Tax withholding figures above are based upon married or single taxpayer with # of exemptions: (EX. M-4 or S-2)

Attach prior month's paycheck stub(s) as Exhibit 2A.

b) Employment benefits: Identify all benefits in addition to wages including bonus paid or due, automobile or travel expense reimbursement, other per diem compensation, memberships paid by the employer.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Will your medical and dental insurance coverage be available for your spouse after the dissolution?

\_\_\_\_\_ Yes \_\_\_\_\_ No

c) Other Income:

(1) Public Assistance (AFDC/GA)	\$ _____	\$ _____
(2) Social Security benefits for party or child(ren)	\$ _____	\$ _____
(3) Unemployment/Workers Comp.	\$ _____	\$ _____
(4) Interest income per _____	\$ _____	\$ _____
(5) Dividend income per _____	\$ _____	\$ _____
(6) Other income: _____	\$ _____	\$ _____
(7) Last Year's Tax Refunds	Federal: _____	State: _____

3. Child Support/Spousal Maintenance:

a) Does either party receive child support or spousal maintenance from a separate proceeding? \_\_\_\_\_ No \_\_\_\_\_ Yes.

If yes, specify the \$\_\_\_\_\_ received each month for child support/alimony for \_\_\_\_\_ by the order of \_\_\_\_\_ County dated \_\_\_\_\_.

b) Child Support or Spousal Maintenance established by court order for person(s) not included in this proceeding currently being paid:

\$\_\_\_\_\_ \$\_\_\_\_\_

To whom is this obligation owed? \_\_\_\_\_

County and Date of Such Order: \_\_\_\_\_

c) Current Monthly Child Support or Spousal Maintenance Order established by temporary order for other party and minor children in this proceeding:

Child Support: \$\_\_\_\_\_ Spousal Maintenance (Alimony): \$\_\_\_\_\_

Any claimed arrearages under existing court order(s)? \_\_\_\_\_ No; \_\_\_\_\_ Yes.

If Yes, specify the amount(s) claimed: Child Support: \$\_\_\_\_\_

Spousal Maintenance (Alimony): \$\_\_\_\_\_

**4. Living Expenses:**

Your estimated monthly expenses: \$\_\_\_\_\_

(Enter the total from an itemized schedule to be attached as Exhibit 4A.)

**5. Real Property:**

**a. Homestead**

**b. Other\***

	a. Homestead	b. Other*
(1) Date acquired	_____	_____
(2) Purchase Price:	\$ _____	\$ _____
(3) Present Fair Market Value	\$ _____	\$ _____
(4) First Mortgage Balance	\$ _____	\$ _____
(5) Second Mortgage Balance	\$ _____	\$ _____
or Home Improvement Loan	\$ _____	\$ _____
(6) Net Value	\$ _____	\$ _____
(7) Monthly Payment: (PITI)	\$ _____	\$ _____
(8) Rental Income, if any	\$ _____	\$ _____

\* Other Real Estate: Provide the same information for other real property such as rental property, lake cabin, etc. as Exhibit 5C.

**6. Personal Property: Fair Market Value**

In Possession of:

	HUSBAND	WIFE	JOINT
a) Household Contents	\$ _____	\$ _____	\$ _____
b) Stocks, Bonds, etc. _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
c) Checking Accts. _____	\$ _____	\$ _____	\$ _____
Savings Accts. _____	\$ _____	\$ _____	\$ _____

d) Receivables and Claims \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

e) Motor Vehicles:

	(1) _____ year/make/model	(2) _____ year/make/model	(3) _____ year/make/model
Market Value	\$ _____	\$ _____	\$ _____
Encumbrance	\$ _____	\$ _____	\$ _____
Net Value	\$ _____	\$ _____	\$ _____
Monthly Payment	\$ _____	\$ _____	\$ _____
In Possession of	_____	_____	_____

f) Boats, Motors, Campers, Snowmobiles, Trailer, etc.:

	(1) _____ year/make/model	(2) _____ year/make/model	(3) _____ year/make/model
Market Value	\$ _____	\$ _____	\$ _____
Encumbrance	\$ _____	\$ _____	\$ _____
Net Value	\$ _____	\$ _____	\$ _____
Monthly Payment	\$ _____	\$ _____	\$ _____
In Possession of	_____	_____	_____

g) Other: (Such as Power Equipment, Tools, Guns, Valuable Animals, etc.)

Description: \_\_\_\_\_ Fair Market Value: \$ \_\_\_\_\_  
 Encumbrance: \$ \_\_\_\_\_  
 Net Value: \$ \_\_\_\_\_

7. Non-Marital Claims:

a) Description: (1) \_\_\_\_\_ (2) \_\_\_\_\_  
 b) Amount Claimed: \$ \_\_\_\_\_ \$ \_\_\_\_\_

Set forth as the basis for and method used to arrive at your claims to be attached as Exhibit 7A.

8. Life Insurance:

	a) _____	b) _____	c) _____
Company	_____	_____	_____
Policy Number	_____	_____	_____
Type of Insurance	_____	_____	_____
Face Amount	\$ _____	\$ _____	\$ _____
Cash Value	\$ _____	\$ _____	\$ _____
Loans	\$ _____	\$ _____	\$ _____
Insured	_____	_____	_____
Beneficiary	_____	_____	_____
Owner	_____	_____	_____

**9. Pension Plan and/or Profit Sharing Plan:**

HUSBAND

WIFE

a) Through Employment:

(1) Present Cash Value

\$ \_\_\_\_\_

\$ \_\_\_\_\_

(2) Vested or Nonvested

\_\_\_\_\_

\_\_\_\_\_

b) Private Plans

(IRA, Keogh, SEP, etc.)

\_\_\_\_\_

\_\_\_\_\_

(1) Present Cash Value

\$ \_\_\_\_\_

\$ \_\_\_\_\_

c) Deferred Compensation:

\$ \_\_\_\_\_

\$ \_\_\_\_\_

d) Military Pension or Disability:

Yes \_\_\_\_\_ No \_\_\_\_\_

Yes \_\_\_\_\_ No \_\_\_\_\_

**10. Debts: (Not Listed in Paragraphs 4 or 5 above)**

a) Secured Debts:

Creditor

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

Total Amt. Owing

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

Monthly Payment

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

When Incurred

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Party Obligated (H, W, J)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Reason for Debt

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Totals

Husband: \$ \_\_\_\_\_

Wife: \$ \_\_\_\_\_

Joint: \$ \_\_\_\_\_

b) Unsecured Debts:

Attach a separate schedule showing the creditor, balance owed, monthly payment, etc. to be attached as Exhibit 9B. Include attorney fees and costs.

Totals:

Husband: \$ \_\_\_\_\_

Wife: \$ \_\_\_\_\_

Joint: \$ \_\_\_\_\_

Dated: \_\_\_\_\_

The statements contained herein are true and complete to the best of my knowledge.

Petitioner

Respondent

Attorney for \_\_\_\_\_

Attorney I.D. #: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone #: \_\_\_\_\_

**FORM 3  
\* APPENDIX A**

**NOTICE IS HEREBY GIVEN TO THE PARTIES:**

**I. PURSUANT TO MINNESOTA STATUTE 518.611, THE AMOUNT OF CHILD SUPPORT OR SPOUSAL MAINTENANCE AS DETERMINED BY COURT ORDER SHALL BE WITHHELD FROM INCOME, REGARDLESS OF SOURCE, AFTER ALL OF THE FOLLOWING CONDITIONS HAVE BEEN MET:**

1. The person entitled to receive the payment or the public authority determines that the person responsible to make the payment is at least 30 days in arrears;
2. The person entitled to receive the payment or the public authority serves written notice of its determination of income withholding, showing arrearage, on the person responsible to make the payment at least 15 days before service of the notice of income withholding and a copy of the court's order for withholding on the payor of funds;
3. Within the 15 day period, the person responsible to make the payment fails to move the court to deny withholding on the grounds that an arrearage of at least 30 days does not exist as of the date of the notice of income withholding, or on other grounds limited to mistakes of fact and, ex parte, to stay service on the payor of funds until the motion to deny withholding is heard. Within 45 days from the date of the notice of income withholding, the court shall hold the hearing on the motion to deny withholding and notify the parties of its decision; and
4. The person entitled to receive the payment or the public authority serves a copy of the notice of income withholding, a copy of the court's withholding order on the payor of funds;
5. The person entitled to receive the payment serves on the public authority a copy of the notice of income withholding, a copy of the court's withholding order, an application to use the public authority's collection services, and the fee for such services.
- 6a. To pay the arrearage specified in the notice of income withholding, the employer or payor of funds shall withhold from the income of the person responsible to make the payment an additional amount equal to 20 percent of the monthly child support or maintenance obligation until the arrearage is paid.
- 6b. The person responsible to make the payment may, at any time, waive the written notice required by this subdivision.
- 6c. The person responsible to make the payment may move the court, under Section 518.64, to modify the order respecting the amount of maintenance or support.
7. The parties and the employer or other payor of funds are further notified that no employer may discharge or refuse to hire or otherwise discipline an employee because the employer must withhold support or maintenance money. Minnesota Statutes, Section 518.611.
8. Notwithstanding any law to the contrary, the order is binding on the employer, trustee, or other payor of the funds when service has been made. Withholding must begin no later than the first pay period that occurs after 14 days following the date of the notice. An employer or other payor of funds in this state is required to withhold income according to court order for withholding issued by other states or territories. The payor shall withhold from the income payable to the person responsible to make the payment the amount specified in the order and amounts required under 6a and shall remit within ten days of the date the person responsible to make the payment is paid the remainder of the income, the amounts withheld to the public authority. Employers may combine all amounts withheld from one pay period into one payment to each public authority, but shall separately identify each person responsible to make the payment. The employer or other payor of funds shall be liable to the person entitled to receive the payment for any amounts required to be withheld.
9. An order for withholding takes priority over any attachment, execution, garnishment, or wage assignment and shall not be subject to the statutory limitations on amounts levied against the income of the person responsible to make the payment. Amounts withheld from an employee's income must not exceed the maximum permitted under the Consumer Credit Protection Act, United States Code, title 15, section 167(b) (2). If there is more than one withholding order on the person responsible to make the payment, the employer or other payor of funds shall put them into effect giving priority first to amounts currently due and not in arrears and then to other amounts in the sequence in which the withholding orders were received up to the maximum allowed under the Consumer Credit Protection Act.



10. When the employment of the person responsible to make the payment is terminated or the periodic payment ends, the employer or other payor of funds is required to notify the public authority within 30 days of the termination date. The notice must include the home address of the person responsible to make the payment and, if known, the name and address of the person's new employer or other payor of funds.
11. Upon the transmittal of the last reimbursement payment to the employee, where lump sum severance pay, accumulated sick pay or vacation pay is paid upon termination of employment, and where the employee is in arrears in making court ordered child support payments, the employer shall withhold an amount which is the lesser of (1) the amount in arrears or (2) that portion of the arrearages which is the product of the person responsible to make the payment's monthly court ordered support amount multiplied by the number of months of net income that the lump sum payment represents.

**II. THE CHILD SUPPORT ORDERED HEREIN SHALL BE ADJUSTED EVERY TWO YEARS BASED UPON A CHANGE IN THE COST-OF-LIVING EFFECTIVE ON THE FIRST DAY OF MAY OF THIS YEAR, AS PROVIDED IN MINNESOTA STATUTES 518.641. THE AMOUNT OF THE ADJUSTMENT SHALL BE DETERMINED BY USING THE U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX, MINNEAPOLIS-ST. PAUL, FOR ALL URBAN CONSUMERS (CPI-U). ANY COST-OF-LIVING ADJUSTMENT PROVIDED FOR HEREIN SHALL BE COMPOUNDED. NO ADJUSTMENT FOR COST-OF-LIVING SHALL BE MADE UNLESS THE FOLLOWING CONDITIONS ARE MET:**

1. The person entitled to receive the payment or the public authority serves a notice of its application for adjustment by mail on the person responsible to make the payment at his last known address at least 20 days before the effective date of the cost-of-living adjustment;
2. Said notice shall inform the person responsible to make the child support payments that an adjustment in payment shall become effective on the first day of May; and
3. The cost-of-living adjustment shall be automatic unless the person responsible to make the payment requests a court hearing on the issue of whether the adjustment should take effect and to stay imposition of the adjustment pending the outcome of the hearing. Notice of said court hearing shall be served on the person entitled to receive the payment and the public authority involved, if any.

**III. A JUDGMENT FOR UNPAID CHILD SUPPORT OR SPOUSAL MAINTENANCE WILL BE ENTERED AGAINST THE PERSON RESPONSIBLE TO MAKE THE PAYMENT, AS PROVIDED BY MINNESOTA STATUTE 548.091, ONLY AFTER ALL OF THE FOLLOWING CONDITIONS HAVE BEEN MET:**

1. The person entitled to receive the payment or the public authority determines that the person responsible to make the payment is at least 30 days in arrears;
2. The person entitled to receive the payment or the public authority serves a copy of an affidavit of default and notice of intent to enter judgment on the person responsible to make the payment by mail at his last known post office address. Service shall be deemed complete upon mailing in the manner designated. The affidavit shall state full name, occupation, place of residence, and the last known post office address of the person responsible to make the payment, the date of the first unpaid amount, the date of the last unpaid amount, and the total amount unpaid;
3. The person responsible to make the payment fails within 20 days after mailing of the notice either to pay all unpaid amount or to request a hearing on the issue of whether arrears claimed owing have been paid and to seek, ex parte, a stay of entry of judgment; and
4. Not less than 20 days after service on the person responsible to make the payment in the manner provided, the person entitled to receive the payment or public authority files with the clerk the affidavit of default together with proof of service and, if payments have been received by the person entitled to receive the payment or public authority since execution of the affidavit of default, a supplemental affidavit setting forth the amount of payment received.

**IV. NOTICE OF ADDRESS OR RESIDENCE CHANGE, AS PROVIDED BY MINNESOTA STATUTE 518.55, SUBDIVISION 3.**

The person responsible to make the payment shall notify the person entitled to receive the payment and the public authority responsible for collection if applicable, of a change of address or residence within 60 days of the address or residence change.

**V. MEDICAL SUPPORT, AS PROVIDED BY MINNESOTA STATUTES 518.171**

1. The person responsible to make child support payments shall name each child as a beneficiary on any health and dental insurance plan that is available on a group basis or through any present or future employer or union.
2. If the person responsible to make payments has available at no additional cost dependent health and dental insurance, it shall be provided for the spouse entitled to receive the payments.

**VI. PURSUANT TO MINNESOTA STATUTES 518.611, SUBD. 10, AS AMENDED, (1986), WHENEVER AN OBLIGATION FOR SUPPORT OF A CHILD TERMINATES UNDER THE TERMS OF THE ORDER OR DECREE ESTABLISHING THE OBLIGATION, AND WHERE THE OBLIGATION IS ENFORCED BY AN ORDER FOR INCOME WITHHOLDING FROM THE OBLIGOR, THE COURT SHALL ENTER AN ORDER, DIRECTED TO THE OBLIGOR'S EMPLOYER OR OTHER PAYOR OF FUNDS TERMINATING THE INCOME WITHHOLDING. THE ORDER TERMINATING INCOME WITHHOLDING MUST SPECIFY THE EFFECTIVE DATE OF THE ORDER, REFERENCING THE INITIAL ORDER OR DECREE ESTABLISHING THE SUPPORT OBLIGATION.**

The order terminating income withholding must be entered once the following conditions have been met:

1. The obligor serves written notice of the application for termination of income withholding by mail upon the obligee at the obligee's last known mailing address; and a duplicate copy of the application is served upon the public authority responsible for the processing of support collection services.
2. The application for termination of income withholding specifies the event that terminates the support obligation, the effective date of the termination of the support obligation, and the applicable provisions of the order or decree that established the support obligation;
3. The application includes the complete name of the obligor's employer or other payor of funds, the business mailing address, the court action and court file number, and the support and collections file number, if known; and
4. After receipt of the application for termination of income withholding, the obligee or the public authority fails within 20 days to request a hearing on the issue of whether income withholding of support should continue clearly specifying the basis for the continued support obligation, and ex parte, to stay the service of the order terminating income withholding upon the obligor's employer or other payor of funds, pending the outcome of the hearing.

DELETE

**VII. PURSUANT TO MINNESOTA STATUTE 518.177, NOTICE IS GIVEN OF MINNESOTA STATUTE 609.26, "DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS," WHICH STATES:**

Subd. 1. Whoever intentionally does any of the following acts may be charged with a felony and, upon conviction, may be sentenced as provided in subdivision 6:

- (1) conceals a minor child from the child's parent where the action manifests an intent substantially to deprive that parent of parental rights or conceals a minor child from another person having the right to visitation or custody where the action manifests an intent to substantially deprive that person of rights to visitation or custody;
- (2) takes, obtains, retains, or fails to return a minor child from or to take the parent in violation of a court order which has transferred legal custody under chapter 260 to the commissioner of human services, a child placing agency, or the county welfare board;
- (3) takes, obtains, retains, or fails to return a minor child from or to the parent in violation of a court order where the action manifests an intent substantially to deprive that parent of rights to visitation or custody; or
- (4) takes, obtains, retains, or fails to return a minor child from or to a parent after commencement of an action relating to child visitation or custody but prior to the issuance of an order determining custody or visitation rights, where the action manifests an intent substantially to deprive that parent of parental rights.

Subd. 2 DEFENSES No person violates subdivision 1 if the action:

- (1) is taken to protect the child from physical or sexual assault or substantial emotional harm;
- (2) is taken to protect the person taking the action from physical or sexual assault;

- (3) is consented to by the parent, step-parent, or legal custodian seeking prosecution; or
- (4) is otherwise authorized by a court order issued prior to the violation of subdivision 1.

The defenses provided in this subdivision are in addition to and do not limit other defenses available under this chapter or chapter 611.

**Subd. 3 VENUE** A person who violates this section may be prosecuted and tried either in the county in which the child was taken, concealed, or detained or in the county of lawful residence of the child.

**Subd. 4 RETURN OF CHILD; COSTS** A child who has been concealed, obtained, or retained in violation of this section shall be returned to the person having lawful custody of the child or shall be taken into custody pursuant to section 260.165, Subdivision 1, paragraph (c), clause (2). In addition to any sentence imposed, the court may assess any expense incurred in returning the child against any person convicted of violating this section. The court may direct the appropriate county welfare agency to provide counseling services to a child who has been returned pursuant to this subdivision.

**Subd. 5 DISMISSAL OF CHARGE** A felony charge brought under this section shall be dismissed if:

- (a) the person voluntarily returns the child within 14 days after he takes, detains, or fails to return the child in violation of this section; or
- (b) (1) the person taking the action and the child have not left the state of Minnesota; and
- (b) (2) within a period of 14 days after taking the action, (i) a motion or proceeding under chapters 518, 518A, 518B or 518C is commenced by the person taking the action or (ii) the attorney representing the person taking the action has consented to service of process by the party whose rights are being deprived, for any motion or action pursuant to chapters 518, 518A, 518B, or 518C.

**Clause (a) does not apply if the person returns the child as a result of being located by law enforcement authorities.**

**Subd. 6 PENALTY** Except as otherwise provided in subdivision 5, whoever violates this section may be sentenced to imprisonment for not more than one year and one day or to payment of a fine of \$3,000, or both.

\* Based on statutes effective on August 1, 1986.

NOTICE OF ADOPTION  
SUBDIVISION 1  
ADDITIONAL INFORMATION  
ADDITIONAL INFORMATION

Date \_\_\_\_\_

Obligor's Name \_\_\_\_\_  
Address \_\_\_\_\_

Re: Notice for Implementation of Cost-of-Living Adjustment  
Court File: In Re the Marriage of:

\_\_\_\_\_, Petitioner and \_\_\_\_\_, Respondent.

Court File No: \_\_\_\_\_.

Dear \_\_\_\_\_:

Please be advised that a cost-of-living adjustment will become effective on \_\_\_\_\_, 19\_\_\_\_. The adjustment is more fully explained and consistent with the terms of paragraph \_\_\_\_\_ of the \_\_\_\_\_.

Prior to the effective date of the adjustment, you have the right to schedule a court hearing on whether the cost-of-living adjustment should take effect and obtain an ex parte stay of the imposition of the cost-of-living adjustment pending the outcome of the hearing. Forms for your use in requesting a hearing are available from the \_\_\_\_\_.

The cost-of-living adjustment upon the child support obligation of \$\_\_\_\_\_ ordered by the court will otherwise become automatic, if you fail to schedule such a hearing and obtain an ex parte court order.

My calculations as to the amount of the adjustment are enclosed. By such computations, you should be paying \$\_\_\_\_\_ for your child support obligation starting on \_\_\_\_\_, 19\_\_\_\_, in equal installments of \$\_\_\_\_\_. If the calculations are satisfactory, please sign and date the attachment, and, after you make a copy for your records, please mail it back to me. A copy of this notice and the original calculation attached shall be filed with the court.

Sincerely,

Name \_\_\_\_\_

State of Minnesota

COUNTY

COURT

JUDICIAL DISTRICT

CASE NO.

In Re The Marriage Of:

\_\_\_\_\_  
Petitioner,

and

\_\_\_\_\_  
Respondent.

**COST-OF-LIVING ADJUSTMENT  
CALCULATION**

This cost-of-living adjustment in child support has been calculated pursuant to Minn. Stat. 518.641 and the Order of the Court dated \_\_\_\_\_ and entered on \_\_\_\_\_.

- Step 1. Total child support payable before adjustment. \$ \_\_\_\_\_
- Step 2. Most current available CPI-U for this year. \_\_\_\_\_
- Step 3. CPI-U for \_\_\_\_\_ of two years ago. (Specify month.) \_\_\_\_\_
- Step 4. Subtract the number in Step 3 from the number in Step 2. \_\_\_\_\_
- Step 5. Divide the number in Step 4 by the number in Step 3. \_\_\_\_\_
- Step 6. Multiply the number in Step 5 by the number in Step 1. \_\_\_\_\_
- Step 7. Add the number in Step 6 to the number in Step 1. \_\_\_\_\_

**YOU MUST NOW PAY \$ \_\_\_\_\_ AS AND FOR YOUR MONTHLY CHILD SUPPORT  
OBLIGATION, EFFECTIVE \_\_\_\_\_, 19\_\_\_\_\_.**

**NOTICE TO OBLIGOR OF MEDICAL SUPPORT ENFORCEMENT**

TO: \_\_\_\_\_, OBLIGOR.

You are hereby notified pursuant to Minn. Stat. 518.171, that thirty (30) days have passed since entry of the court order dated \_\_\_\_\_. You have failed to provide written proof that the required health and dental insurance has been obtained, or that an application for insurability has been made.

If, after fifteen (15) days from the date of this notice, written proof that the insurance coverage exists is not received at the address listed below, a copy of the court order for insurance coverage will be forwarded to your employer or union. This order is binding on your employer or union.

Upon receipt of the order, your employer or union will enroll the minor children named in the order as beneficiaries in an insurance plan and withhold any required premium from your income or wages. If more than one plan is offered by your employer or union, the children will be enrolled in the least costly plan otherwise available to you that is comparable to a number two qualified plan as defined by Minn. Stat. 62E.06, Subd. 2. The children will remain eligible for insurance coverage until emancipated or until further order of the court.

If dependent health and dental insurance is available for the benefit of your (ex-) spouse at no additional cost, the employer or union will also enroll that person.

If you fail to maintain the medical or dental insurance as ordered, you will be liable to the obligee for any medical or dental expenses incurred from the date of the court order. Proof of failure to maintain insurance constitutes a showing of increased need by the obligee pursuant to Minn. State 5128.64 and provides a basis for a modification of your child support order.

Dated: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: (\_\_\_\_\_) \_\_\_\_\_

**NOTICE TO EMPLOYER OR UNION OF MEDICAL SUPPORT**

TO: \_\_\_\_\_, EMPLOYER OR UNION.

Re: Employee, \_\_\_\_\_

Social Security Number: \_\_\_\_\_

You are being served with a medical support order pursuant to Minn. Stat. 518.171, which requires you to enroll the minor children named in the order as a beneficiary in any health and dental insurance plan that is available to the employee on a group basis, and withhold any required premium from your employee's income or wages.

If more than one plan is offered by you, the children must be enrolled in the insurance plan in which your employee is enrolled, or the least costly plan otherwise available to your employee that is comparable to a number two qualified plan as prescribed by Minn. State. 62E.06, Subd. 2.

Insurance coverage for the children cannot be terminated until the children are emancipated or until further order of the court.

If dependent health and dental insurance is available for the benefit of the employee's (ex-) spouse at no additional cost, you must also enroll that person.

When an order for dependent insurance is in effect, the employer must release, upon request, to the custodial parent, the county agency, or the state agency, information on the dependent coverage, including the name of the insurer.

You must comply with the order. Minn. Stat. 518.171, Subd. 4

Dated: \_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone # ( \_\_\_\_\_ ) \_\_\_\_\_

**NOTICE OF INCOME WITHHOLDING**

TO: \_\_\_\_\_, OBLIGOR.

You are hereby notified pursuant to Minn. Stat. 518.611, that fifteen (15) days from the date of this notice your employer or payor of funds will be instructed to deduct your court-ordered child/spousal support payments and payments for past due support from your income.

Your child/spousal support payments are more than thirty (30) days in arrears since the court issued its order for income withholding on \_\_\_\_\_. In addition to withholding \$\_\_\_\_\_ per \_\_\_\_\_ for child/spousal support, \$\_\_\_\_\_ per \_\_\_\_\_ will be withheld by your employer or payor of funds until past due support is paid in full.

If you believe your payments are not at least thirty (30) days in arrears, or if other mistakes of fact exist, you can delay income withholding by requesting within fifteen (15) days from the date of this notice that the court:

1. Deny income withholding on the grounds that an arrearage of at least thirty (30) days did not exist as of the date of this notice, or on other grounds, limited to mistakes of fact, and
2. Stay service on the payor of funds until the motion to deny income withholding is heard.

Forms in support of a motion to deny income withholding may be obtained from \_\_\_\_\_.

If you request a court hearing, you must serve notice upon \_\_\_\_\_. If you fail to serve notice, your employer or payor of funds will be instructed to begin withholding child/spousal support payments from your income.

Dated: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone #: (\_\_\_\_\_) \_\_\_\_\_



State of Minnesota

COUNTY

COURT

JUDICIAL DISTRICT

CASE NO.

In Re The Marriage Of:

\_\_\_\_\_  
Petitioner,

and

\_\_\_\_\_  
Respondent.

**NOTICE OF ORDER TO  
A PAYOR OF FUNDS**

TO: \_\_\_\_\_, A PAYOR OF FUNDS:

You are hereby notified pursuant to Minn. Stat. 518.646, that according to the terms of the order dated \_\_\_\_\_, and issued by the \_\_\_\_\_ Court, \_\_\_\_\_ Judicial District, County of \_\_\_\_\_, in file number \_\_\_\_\_, the above named \_\_\_\_\_ - obligor is to provide (support) (health and dental insurance) for (\_\_\_\_\_, the obligee (minor children of the parties, namely:

\_\_\_\_\_ born \_\_\_\_\_  
\_\_\_\_\_ born \_\_\_\_\_  
• \_\_\_\_\_ born \_\_\_\_\_

The relevant provisions of the order are as follows:

(---here set out the operative provisions of the order verbatim---

STATE OF MINNESOTA

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, being first duly sworn upon oath, deposes and states that s/he is the \_\_\_\_\_; that s/he has read the foregoing notice and knows the contents thereof and that the same is true of his/her knowledge except as to those matter believed to be true.

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

State of Minnesota

COUNTY

COURT

JUDICIAL DISTRICT

CASE NO.

**NOTICE OF INTENT TO  
ENTER AND DOCKET JUDGMENT**

In Re The Marriage Of:

\_\_\_\_\_  
Petitioner,

and

\_\_\_\_\_  
Respondent.

TO: \_\_\_\_\_, THE ABOVE-NAMED \_\_\_\_\_-OBLIGOR:

You are hereby notified pursuant to Minn. Stat. 518.091 that you have twenty (20) days from the date of this notice to either pay all amounts claimed unpaid in the attached affidavit of default or to request a court hearing on the issue of whether the amounts claimed owing have been paid and to seek, ex parte, a stay of entry of judgment and serve a copy of your Notice of Motion and Motions on \_\_\_\_\_. Should you fail to do either of the above, judgment will be entered and docketed against you in favor of \_\_\_\_\_ for (child support) (spousal maintenance) in the amount of \$\_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone #: (\_\_\_\_\_) \_\_\_\_\_

STATE OF MINNESOTA

COUNTY OF \_\_\_\_\_

### AFFIDAVIT OF DEFAULT

\_\_\_\_\_, being duly sworn, upon oath, deposes and states that s/he is the

\_\_\_\_\_  
According to the order dated \_\_\_\_\_, the obligor is to pay \$\_\_\_\_\_ per \_\_\_\_\_ as and for (child support) (spousal maintenance). The obligor is more than thirty (30) days in arrears. For the period \_\_\_\_\_, 19\_\_\_\_ through \_\_\_\_\_, 19\_\_\_\_, payments due amounted to \$\_\_\_\_\_; the amount paid was \$\_\_\_\_\_, and the total amount unpaid is \$\_\_\_\_\_.

The full name of the obligor is \_\_\_\_\_

The obligor's last known employer is \_\_\_\_\_

The obligor's last known address is \_\_\_\_\_, in the City of \_\_\_\_\_

State of \_\_\_\_\_. The obligor's post office address is \_\_\_\_\_. The obligor is not in the Armed Services.

All support payments are payable to \_\_\_\_\_

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA

COUNTY OF \_\_\_\_\_

**SUPPLEMENTAL  
AFFIDAVIT OF DEFAULT**

\_\_\_\_\_, being duly sworn, upon oath, deposes and states that s/he is the

\_\_\_\_\_

Since the date of the execution of the Affidavit of Default herein on \_\_\_\_\_, the obligor has made payments in the amount of \$ \_\_\_\_\_. Accordingly, judgment should be entered against the obligor, \_\_\_\_\_, and in favor of \_\_\_\_\_ for the unpaid balance in the amount of \$ \_\_\_\_\_.

\_\_\_\_\_

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Notary Public